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SUMMARY RECORD OF THE FIRST PART (PUBLIC)* OF THE 1397th MEETING

Held at Headquarters, New York,
on Monday, 27 March 1995, at 10 a.m.

Chairman: Mr. AGUILAR

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* The summary record of the second part (closed) of the meeting appears as document CCPR/C/SR.1397/Add.1.

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The meeting was called to order at 10.15 a.m.

SOLEMN DECLARATION BY A NEWLY ELECTED MEMBER OF THE COMMITTEE IN ACCORDANCE WITH ARTICLE 38 OF THE COVENANT

1. Mr. Bhagwati made the solemn declaration that he would discharge his duties as a member of the Human Rights Committee impartially and conscientiously.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (continued)

Report of Haiti (CCPR/C/105)

2. At the invitation of the Chairman, Mr. Aubourg and Ms. Denerville (Haiti) took places at the Committee table.

3. Ms. DENERVILLE (Haiti) said that, from the very day of President Aristide's return to power, human rights in Haiti had been at the centre of his concerns. As a result of the serious human rights violations committed during the three years of military rule from 1991 to 1994, the Government found itself faced with an enormous task of rebuilding, which it had begun with every means available. Her introduction to the report, which had been submitted in compliance with a special decision of the Human Rights Committee, would focus on the measures taken by the Government to improve the situation of human rights and take action against those responsible for violations and on the institutional reforms undertaken, in particular of the judicial system.

4. Within the framework of the Governors Island Agreement, the President of Haiti had decided to extend limited amnesty to those involved in the coup d'état, covering only their political crimes. Crimes under ordinary law, or "blood crimes", did not, of course, fall under that amnesty, and their victims retained the right to demand justice. In order to foster national reconciliation and restore the confidence of the Haitian people in their justice system, a National Commission on Truth and Justice had been established for the purpose of making public the truth about human rights violations and determining individual and institutional responsibility for those crimes.

5. The second major focus was the reform of government institutions, especially the judicial system. An objective assessment and analysis of the problems and limitations faced by the judiciary in Haiti had been prepared and short-, medium- and long-term objectives defined. Among them were enhancing the independence and impartiality of the judiciary and establishing a human, material, moral and legal framework to promote the administration of justice, thus transforming the traditional oppressive State into a State at the service of the people. Special attention would be paid to minors, youthful offenders and children at risk. The judiciary must be purged and archaic and outmoded legal codes reformed to meet the requirements of modern legal science. A coherent and systematic policy of citizenship training and education would be established. Finally, the prison system would be modernized in accordance with the Constitution and international norms. Social justice was also a primary concern, and a number of legislative measures in that field were pending.

6. Mr. BRUNI CELLI said that, in his capacity as Special Rapporteur of the Commission on Human Rights on the situation of human rights in Haiti, he had visited the country in January 1995, and was more convinced than ever of the desire of the Aristide Government for reform. With the support of the international community and human rights bodies, that desire could lead to real change in the human rights situation. An example was the separation of the police and the armed forces, which had been stipulated in the Constitution of 1987. The Parliament had approved the laws giving effect to that constitutional provision, and the troop strength of the armed forces had begun to decline. The Government, with international support, had begun a programme of human rights education for police officers.

7. More information was required on the National Commission on Truth and Justice, its specific functions, when it would begin operations and whether its members would include only Haitians, or persons from other countries as well. A report of its activities and accomplishments thus far would be helpful.

8. The almost total lack of power of the judicial system was a matter of great concern to President Aristide, and international organizations were in the process of conducting a study of the system and would issue their analysis and recommendations for necessary reforms. Updated information regarding international cooperation programmes to address such serious social and economic problems as rampant unemployment, crime and an almost total lack of infrastructure would be helpful. Both parliamentary and presidential elections would be held during the current year, and he would like to hear more about the election process and the measures to ensure that it would go smoothly.

9. Under Security Council resolution 940 (1994), the multinational force which had been present in Haiti would terminate its functions in the very near future and the United Nations Mission in Haiti (UNMIH) would assume its functions. It would be interesting to hear the Government's evaluation of the effectiveness of that multinational force.

10. Mrs. EVATT said that she would like to learn more about the amnesty law and whether it left open to prosecution all extrajudicial killings, violence and torture perpetrated by the authorities. She also requested clarification of whether the individual redress to be provided to victims as a follow-up to the work of the National Commission on Truth and Justice would include compensation. The procedure to be followed for the prosecution of human rights offenders was also unclear, as were the special procedures that would protect the privacy of the female victims of politically motivated acts of sexual abuse when they gave testimony.

11. The civilian police force included many former members of the armed forces who might have committed human rights offences. She wondered what mechanism existed to identify those involved in prior human rights abuses. More information was needed with regard to the recent increase in civil disorder and the rise of vigilante groups. Further information on progress in the restructuring of the judiciary and on arrest, detention and trial would be welcome.

12. Mrs. MEDINA QUIROGA said that she wished to learn more about the plans for the establishment of an independent and impartial judiciary, human rights training for police officers, and progress in disbanding paramilitary groups. With regard to the interim police force, she wondered how that force would be purged while the new civilian police force was being established. In view of the current weakness of the judicial system, the arrangements for receiving the complaints of women who had been victims of sexual abuse should be explained. A clearer definition of the understanding of political crimes and "blood crimes" under the amnesty law was needed, as was more information on the composition and duration of the National Commission on Truth and Justice and the framework for the forthcoming elections.

13. Mr. EL-SHAFEI said that the report was very short; it was unfortunate that it mostly contained information about the constitutional and legal framework for the implementation of human rights agreements, rather than a factual description of the situation in Haiti. He would have welcomed more information regarding events since the restoration of the constitutional Government, and regarding any reform legislation that was being envisaged.

14. Referring to paragraph 19 of the report, he asked for an explanation of the sentence concerning advantages vested in Haitians by birth who had never given up their nationality. He also wondered in what circumstances the Senate could assume the function of High Court of Justice, as described in paragraph 22, and whether that had already taken place.

15. He requested detailed information on the results of the work of the National Commission on Truth and Justice, particularly regarding the contents of any report that might have been produced; further information was also needed concerning the plans, referred to in paragraph 27, for an institution or mechanism to be set up in future for the purpose of continuing and completing the work of the Commission.

16. He asked for confirmation regarding the reported existence of amnesty laws in respect of "political" crimes, and requested clarification of what constituted a political crime; and he wondered whether any statistics were available regarding the number and type of human rights violations in recent years, and whether the current justice system could respond meaningfully to those violations.

17. He asked what was the current strength of the police force, what power the judicial authorities had over the armed forces, whether there were still armed civilians who had not given up their weapons, and what measures would be taken to prohibit the use of those weapons against other civilians. He would also welcome information as to what measures had been taken against the so-called Armed Revolutionary Front of the Haitian People; and whether any civilian institution capable of promoting law and order had been established.

18. Mr. KLEIN said that the Haitian people needed to be free from fear; such confidence-building, while of the greatest importance, was very difficult, and required a restructuring of the justice system. He wondered what was the current state of the administration of justice in Haiti, and whether judges who did not meet the standards of the 1987 Constitution were still in office.

19. He inquired about the current status of former members of the armed forces who had been dismissed, and what control the Government had over such people. He requested further information regarding human rights education, particularly in respect of the training of police officers, public officials and members of the armed forces. He wondered whether there were any plans to introduce human rights commissioners or ombudsmen. Referring to paragraph 10 of the report, which stated that there had never been any slavery in Haiti, he recalled that article 8 of the Covenant also prohibited compulsory labour, and inquired whether any violations had been reported in that respect.

20. He understood that it had not yet been possible to implement all the necessary changes due to lack of material and human resources; however, things could not be left as they stood, and the representatives of Haiti should state in more concrete terms what had been done or was being done. He welcomed the establishment of the National Commission on Truth and Justice, and suggested that its work should be accelerated. He asked for a rough estimate of the number of persons who had been actively involved in committing murders and torture.

21. Mr. POCAR said that, although the Committee did not find the report very satisfactory, that was often the case with a country's first report, and the Government had had little time in which to prepare it. The report before the Committee was a special report, and a full initial report would be required in due course.

22. Referring to paragraphs 15 and 23, he requested additional information regarding the training of magistrates and judges. Regarding paragraph 10, he recalled that article 8 of the Covenant covered forced labour. Certain non-governmental organizations had reported that a system existed in Haiti whereby certain children from rural areas were subjected to forced labour in urban families; he asked what plans existed to remedy that situation. The situation of children should be one of the Government's major considerations.

23. He requested additional information regarding the composition of the National Commission on Truth and Justice; in particular, as to whether all its members would be Haitian nationals. He also wondered what would be the functions of the body which would eventually replace the Commission, what was the latter's current relationship to the judicial system, and what were the "relevant State agencies" referred to in paragraph 28 of the report.

24. Referring to paragraph 4, he welcomed the incorporation of the Covenant into the domestic legislation of Haiti, and requested confirmation of Haiti's accession to the optional protocols to the Covenant.

25. Mr. PRADO VALLEJO welcomed the fact that the Government had sent a high-level delegation, showing its intention of cooperating fully with the Committee. He recalled that the report before the Committee was a special one which had been prepared at short notice, and that given the current situation in Haiti, tolerance should be shown regarding the document's imperfections.

26. He wondered whether the Government had begun a real and effective process of investigation of the crimes committed during the recent period of

dictatorship, and what results had been achieved. Although the setting up of the National Commission on Truth and Justice had not yet been completed, it was important that the investigations should begin while the evidence could still be collected. He would welcome additional information as to how the Commission was to be organized.

27. It would be interesting to know how the Haitian Government planned to organize the National Commission on Truth and Justice and what its composition would be. As Haiti was part of the inter-American system, the inclusion of Latin American representatives on the Commission would enhance its credibility. He wondered whether the Government would develop human rights education programmes for judges and schools, perhaps with the help of the United Nations Centre for Human Rights, which would be opening an office in Port-au-Prince shortly. The United Nations and the Organization of American States (OAS) might also provide assistance for the reform of the judiciary and the police. It would be very important for the Committee to know whether General Cédras and his team had been promised amnesty by the United States negotiating team in exchange for their departure. He wondered whether the Aristide Government supported such amnesty, which would be a repudiation of human rights.

28. Noting the significant increase in crime since the return of President Aristide, he asked whether the Government intended to prosecute the perpetrators - who were mainly members of the police, military and paramilitary groups - and to institute social and educational programmes in order to tackle the root causes of the problem. He sought confirmation of reports that the President had encouraged citizens to band together to defend themselves; protection against crime was the responsibility of the State. Equally disturbing was the fact that members of the old regime were still on active duty in the military and police forces. He wondered whether the Government would formulate a programme to address that problem, possibly with the assistance of the inter-American system or the United Nations.

29. Noting that the next elections would be crucial to the consolidation of democracy in Haiti, he inquired whether remedies existed for human rights violations at the polls. In that connection, he urged the Haitian Government to ratify the Optional Protocols to the Covenant. Lastly, it would be useful to know how many Haitian refugees remained at the United States Naval Base at Guantanamo Bay, what their situation was and whether they feared prosecution if they returned to Haiti. The delegation should describe any mechanisms in place to ensure that the rights of those refugees were protected.

30. Mr. BUERGENTHAL expressed surprise at the report's failure to provide a true picture of the situation in Haiti. It should have contained more information on the problems the country faced and on the Government's plans to deal with those problems. In particular, it would have been useful to know the real situation of the judiciary and the police and what action the Government planned to take in those areas. Information should have been provided on the organization of the elections and the problems encountered in the process. It would also have been interesting to know how the Government planned to protect and compensate those who had been the victims of abuse during the previous regime. Since it obviously had no funds for that purpose, he wondered whether a

special fund was being established or if efforts were being made to obtain external resources.

31. It was also surprising that, thus far, only one person, the Chairman, had been appointed to the National Commission on Truth and Justice. He wondered when the Commission would be established; the longer the delay, the less effective it would be. He would appreciate details on how the Commission intended to deal with possible intimidation of its members and on whether security arrangements had been made to protect the witnesses who would testify before it. The delegation should provide an idea of what the Commission's powers would be, in particular, whether it would have access to military and police records. It should also indicate whether the recommendations of the Commission would be binding on the Government. He requested clarification of the relationship between paragraph 26 (a) and paragraph 26 (c) and of the time-frame involved. In particular, he would appreciate an explanation of paragraph 26 (c).

32. Mrs. HIGGINS said that, while she agreed with Mr. El-Shafei, Mr. Klein and, in particular, Mr. Buergenthal concerning the content of the report, the brevity of the report was, to some extent, understandable in view of the short time that the democratic Government had been in office. She hoped that the delegation would view the dialogue with the Committee in a constructive light. Echoing Mrs. Evatt's concern about the granting of amnesty for political crimes only, she said that, in the light of Haiti's past, those crimes were likely to be the most heinous of all; indeed, ordinary crimes such as looting paled in comparison. In that connection it would be useful if the delegation clarified the definition of political crimes. She would be interested in knowing, in particular, whether "political" meant acts committed for political motives or by certain categories of persons. Noting that in many newly democratized countries, amnesty had been viewed as the negotiating price for the restoration of democracy, she stressed that, unless past crimes were addressed, the future would remain uncertain.

33. The parallelism between a return to democracy and an increase in social disorder was a disturbing trend in many newly democratized countries. While terror and intimidation often abated under democracy, street crime increased when the order imposed by the dictatorship was gone. She wondered if the human rights records of candidates for the armed forces and police force were scrutinized and if those who had committed violations would be declared ineligible for duty.

34. It would be important to know how the everyday reality in Haiti would be brought into line with its legislation. She noted, in particular, that legislation requiring arrest warrants was not always enforced and that registers were not kept at detention centres although that was required by the Committee's general comment. The lack of proper detention procedures or prison inspections was also disturbing. Perhaps the Ministry of Justice should oversee the prison system or international assistance should be sought.

35. The fear that continued to hamper the work of the judiciary gave cause for concern. Judges and prosecutors were still afraid to issue arrest warrants or investigate cases in which members of the military, paramilitary groups and

certain civilian supporters of the former regime had been closely involved. The judiciary was also faced with problems of corruption, and it lacked the most basic materials and properly trained staff. She wondered if the Committee could be of assistance in remedying that situation. Perhaps the Haitian Government could seek input from judiciary systems in other French Caribbean nations or recruit graduates of Haitian law schools whose human rights records were clean. Lastly, she inquired whether Haitian legislation would be translated into Creole and proceedings would be conducted in Creole.

36. Mr. LALLAH said that, like Mr. Prado Vallejo, Mrs. Evatt and Mrs. Higgins, he was concerned that the granting of amnesty might have been the price for the restoration of democracy. He was also concerned that the mandate of the National Commission on Truth and Justice provided for selective investigation of the most serious violations. The composition and mandate of the Commission should have been more carefully charted. He would appreciate information on how the Commission's findings would be processed; it was his impression that they would be submitted to the judiciary. Consideration must be given not only to providing compensation to victims of human rights violations but also to sanctioning such violations under law in order to guard against a culture of impunity.

37. It was disturbing that the former army, which had been widely regarded as the principal arm of repression, had been replaced by an interim police force which had no mechanism for excluding those persons responsible for past human rights violations. He wondered if such a police force would enjoy any credibility with the Haitian people or even the authorities themselves. It was extremely disturbing that perpetrators of human rights violations apprehended by police were released by non-functional courts (report of the Secretary-General to the Security Council (S/1995/46) dated 17 January 1995).

38. Mr. ANDO said that he shared the concern expressed by Mr. Buergenthal and other Committee members about the content of the written report but understood the difficulties confronting Haiti. As Mr. Lallah and other Committee members had said, the lack of a mechanism for excluding perpetrators of human rights violations from the interim police force and the inadequate judiciary and penal system were worrisome. It also seemed that the disarming of persons possessing firearms was not proceeding satisfactorily, particularly in the rural areas, creating a feeling of insecurity among the inhabitants. Perhaps the Committee could be of assistance to the Haitian Government in resolving some of those problems, since it had experience in dealing with countries making a transition to democracy and wrestling with problems of impunity.

39. He asked what was being done in practical terms to conduct a permanent child health campaign, whether there had been any cases involving the kidnapping and sale of children for the purposes of organ transplantation, and whether the Haitian Government planned to assign free defence counsel to accused persons at the pre-trial investigation stage of proceedings. He also requested further information on detention conditions, specifically whether men and women, and suspects and convicted persons, were held separately. Finally, with reference to paragraph 23 of the report, the reporting State should clarify how it intended to organize its judicial system, how it planned to train judges, and whether any external assistance would be required for those purposes.

40. Mr. KRETZMER said that the Committee would appreciate further information on the status of the army in Haiti; in particular he wanted to know about civilian control over military structures and the Government's future policy on the military. With regard to paragraph 6 of the report, it would be useful to receive a full account of the structures which exercised control over the use of weapons and equipment by the military.

41. On the topic of the police force, he sought additional details on measures designed to bring the police under civilian control, and also the machinery currently in place in Haiti to investigate complaints of police misconduct.

42. Mr. FRANCIS said he understood the extent to which the reality of the situation in Haiti had dictated the general approach to the amnesty, but he urged the Haitian parliament to take the opportunity to set an example. The amnesty should be confined only to those involved in the departure of General Cédras, and the country's Constitution should provide for its own defence by establishing penalties for actions which violated its provisions.

43. On specific issues, he asked about the actual political situation in Haiti in the wake of the most recent attempted coup. The Committee would also be interested to learn about the extent of national reconciliation which had taken place between the anti- and pro-Aristide factions. Regarding the structure and reform of the judiciary, he asked what was being done to train existing members of the Supreme Court with a view to ensuring their impartiality and greater technical competence. The reporting State should also indicate what measures it was contemplating to establish institutional agencies designed to receive complaints and speedily redress human rights violations.

The public part of the meeting rose at 12.35 p.m.